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TRIAL EXHIBIT  
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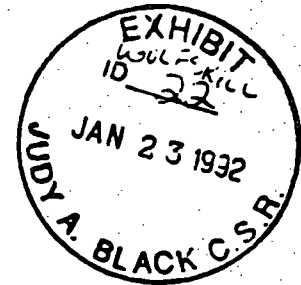
March 20, 1986

HAND DELIVERED

Administrator, New Jersey  
Department of Environmental Protection  
Division of Water Resources  
Water Quality Management Element  
CN-029  
Trenton, New Jersey 08625

Attention: John J. Trella, Ph.D

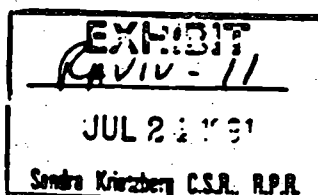
RE: Hatco Chemical Corporation -  
Draft NJPDES Permit



Dear Dr. Trella:

As you will recall, this firm represents Hatco Chemical Corporation ("Hatco") regarding the above matter. This letter is submitted respectfully to the Department as an initial response and as introductory comments relating to the draft NJPDES permit issued by the DEP and relating to Hatco.

From the outset please be advised that Hatco reserves the right to supplement and amend these comments as the facts and further investigation warrant. As you know Hatco has repeatedly requested that the Department provide the groundwater files relating to Nuodex Chemical Corporation so that that information may be included within Hatco's review and evaluation of the draft NJPDES permit, and accordingly, so that a full range of comments thereon could be provided. However, the DEP did not produce any portion of these files until approximately February 25, 1986, 1986. A substantial amount of information was not produced even at that time, and to the contrary, Hatco was advised by the DEP that the balance of the files could only be obtained by contacting diverse divisions within the Department where, in turn, elements of the files were being maintained.



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When Hatco attempted to obtain the information through communications with one Lisa Swangler, as per the Department's directions, the information was not immediately available. Instead Hatco was advised as to additional steps which were required to obtain the information including, as examples, the need to write to other departmental representatives who were acting as custodians of the records. Thus on March 13, 1986 correspondence was sent from the offices of Dan Raviv Associates, Inc., to Ms. Kathy Locane, Mr. Vincent Krisak, and Mr. Tom Kearns, all of whom are officials of the DEP and custodians of these various files pertaining to the Nuodex data. In sum, rather than providing this required information to Hatco, from a unitary source, the Department has required Hatco to travel several different routes through various divisions of the Department to track down and then request all of this information. As you are aware, this data is necessary as a pre-requisite to a full evaluation by Hatco of the draft NJPDES permit which you issued. Nonetheless the DEP has -- concurrently with these other facts -- also mandated that Hatco provide comments to the draft NJPDES permit no later than March 24, 1986, or else face the prospect that -- at least in the eyes of the Department -- the draft permit would become "final." See, letter dated March 14, 1986 from Arnold Schiffman.

Against this background, the present initial response is being provided by Hatco to the Department. It is done so with a full reservation of rights to amend and supplement as may be deemed necessary after review and evaluation of the Nuodex data, and/or as may be warranted after further review. You will recall that the Department had well over one year to conceive and propose the draft permit, and on other hand, has provided Hatco only a review period from approximately January 1986; and even this review period has been abridged by the delay relating to the availability of files from the Department.

For these reasons these preliminary comments are also submitted with objection to the procedures which the DEP has utilized and mandated to date in this matter.

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## I. Introduction

To being with, Hatco respectfully submits that this facility under the existing circumstances is not one which is properly to be regulated by the Department under the NJPDES regulations, which derive under the Federal Water Pollution Control Act. 33 U.S.C. Section 1251 et. seq. That federal legislation -- which is now being implemented through the New Jersey Department of Environmental Protection after certification by the EPA Administrator -- is one which, for a variety of reasons does not contemplate regulation of the Hatco facility. It is not the intent of these initial comments to provide a legal brief setting forth the extensive objections by Hatco to the purported use of the NJPDES regulations to regulate this facility, but rather to advise the Department as to Hatco's position that the NJPDES regulatory scheme is not apposite in this case.

The Clean Water Act does not purport to require permitting of natural water courses such as the Department is seeking to regulate under this draft permit. Similarly the Clean Water Act does not reach so far as to require a NJPDES permit for facilities (the so called "lagoons") unless and until there is a factual basis and sustainable findings that there is some discharge from same into the groundwaters and/or surface waters of the State.

Further, to the extent that the Department's regulations purport to implicate all natural water courses, and/or facilities for which there is no evidence of discharge, within the NJPDES permitting process, those regulations are ultra vires, and they are so overbroad and/or vague as to be legally deficient. It should be added that to the extent that the Department seeks to interpret or apply its regulations so as to allow such application of the rules, that too constitutes an unlawful extension of the powers delegated to the Department.

Please note however, as we have discussed, Hatco seeks to work with the DEP to take all reasonable steps to allay your concerns relating to any items pertaining to its operations. Kindly advise as to when the parties may meet to confer in detail in order to establish a course of action which will satisfy the Department's concerns.

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The objection here is to the use by the Department of the NJPDES regulations to accomplish this end, and further, the omnibus way in which those regulations are being applied. It is submitted that they do not cover all of the various items which purport to be mandated under the draft permit and therefore the permit itself should be withdrawn and in its place there reasonably may be monitoring requirements, etc., which derive after the conferences and joint technical evaluations which we herein request.

## II. Evaluation

With regard to the draft permit itself, and while re-emphasizing Matco's objection to being compelled to respond on this relatively short notice and without the full production of information by the Department, please consider the following comments:

(1) There is an existing Administrative Consent Order between the DEP and Matco. Under that order Matco has been required to install monitoring wells at numerous locations throughout the property and to regularly test ground waters through those wells. That has been done regularly and, to our understanding, to the satisfaction of the Department. Before the DEP by fiat through this "new" permit requires the installation, maintenance, etc., of numerous additional wells at diverse sites throughout the property -- and testing of same -- it is incumbent on the Department to indicate the basis on which they seek to essentially re-open what is an administrative matter which had been finally resolved and settled through official and appropriate administrative actions and channels. Matco objects to a unilateral mandate by the Division that it (Matco) be compelled to deviate from the terms and provisions of an Administrative Consent Order without a full explication by the Department as to the basis for same. Further, to the extent that the Department seeks such results, that should be achieved through a re-opening of the Administrative Consent Order and not by this unilateral action by the division.

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(2) To the extent that the draft permit seeks so many items of installation, construction, remedial action, etc., and such actions are to be taken throughout the premises and relate to numerous different areas (such as the ponds, lagoons, natural drainage areas, etc.), Hatco respectfully requests that a meeting be set to determine a compliance schedule -- and/or a phasing schedule -- such that items can be prioritized and work can be undertaken with attention provided to more specific and defined items. Essentially it is requested that the order be narrowed such that the work to be accomplished, and the areas within which such work is to be accomplished, are put into a compliance schedule and a phasing schedule, so that potentially -- and depending on the results -- certain items of the work may become moot.

(3) Kindly recall that during our recent conference in your offices, it was indicated to Hatco that certain of the well requirements were, in fact, impossible to attain due to the proposed location of same. It is requested that those items be withdrawn from the draft permit.

(4) To the extent that the draft permit requires remedial action at the present time, without a full set of sampling and analysis to support the need for same, it is requested respectfully that all such remedial action be withdrawn from the permit.

(5) In the Public Notice there is substantial reference to "discharge of pollutants," "discharges to ground water," "contaminated stormwater run-off," etc. During our recent conference in your offices, and to the best of our recollection, it was noted that there has been no departmental findings that there have been discharges of pollutants to groundwater, and/or contaminated stormwater run-off, etc. There is no factual basis on which such a finding can be made by the Department. Therefore, to the extent that the permit or its attachments indicate to the contrary those conclusions are improper and must be withdrawn. Further to the extent that the draft permit purports to require that Hatco take action based on such conclusions, such a mandate from the DEP is unfounded and should be withdrawn.

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(6) Hatco takes exception to the conclusion in the Public Notice -- and/or otherwise where it might appear in the draft permit -- that the NJPDES requirements are the mechanism by which this facility is to be regulated. In fact, in the Public Notice, reference is made to the fact that the NJPDES permit is to regulate "existing pollutant discharges." It is our understanding, however, that the Department has not made any such finding of fact. The NJPDES process is not apposite.

(7) In the Fact Sheet there is a description of discharges. Hatco respectfully takes exception to same. If the Department has the factual basis on which to support those statements it should be set forth such that Hatco may properly evaluate same before final comments and response is required.

(8) To the extent that the Department in the permit or any of its accompanying documents purports to require that new surface impoundments be constructed, Hatco takes exception and requests that same be withdrawn. Also, in the Permit there is reference to discharges to ground water from "two emergency storage basins." There is no factual basis known to Hatco which supports that conclusion by the Department. It should be withdrawn from the permit and any other accompanying documents. Similarly -- and although it was noted at our recent meeting that the permit did not purport to require remedial action at this early date -- the permit does require "removal of all contaminated soil from the site." That is an overbroad and vague requirement which Hatco requests be withdrawn.

(9) The Permit refers to "discharges to ground water" from an "unlined waterway." That is a naturally occurring water course and Hatco respectfully takes exception to the requirement that it undertake a substantial monitoring program of same, and/or remedial action regarding same.

(10) The requirements of the draft permit are set forth in such a broad manner as to require so much action simultaneously by Hatco as to render performance effectively impossible. Yet at the same time the statutory scheme subjects Hatco to extensive

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civil and potentially criminal liability for failure to comply. Therefore, before any permit or administrative action becomes final, it is requested that representatives of the Department and of Hatco meet for plenary planning and technical sessions to determine precisely what needs to be done, how, and under what type of compliance schedule.

(11) Item #10 under Part I of the permit sets forth a time schedule which would not be possible to meet given the array of work which the permit, in its entirety, requires.

Additionally to the extent that item #10 in Part I purports to require the permittee to submit to the Department a plot plan of the facility showing the location of all discharges, same is unlawful and should be withdrawn from the permit.

(12) In Part 11(c) of Part I of the permit, there is reference to the methodology to be used for any analytical test procedures. That is a boilerplate provision and should be excluded unless and until the DEP makes some preliminary finding that those procedures apply to what is being required throughout the balance of the permit.

(13) To the extent that the NJPDES permitting scheme applies, it is requested respectfully that the DMR requirements be tailored-made to the various items within the scope of the permit, due to the number of items required and their diverse reaches throughout the property.

(14) With regard to Item #17 of Part I, it is requested respectfully that an exemption to the requirement for the "emergency plan" be provided, at least until monitoring systems can be put in place and data obtained, and same reviewed by the Department in conjunction with representatives of Hatco.

(15) It is submitted respectfully that Item #27 of Part I of the permit is not apposite. The permit does not become final or effective unless and until the full administrative process has been completed, such that any proceedings in the OAL are finalized and the matter has been acted upon by the Commissioner.

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(16) With regard Part II of the permit (construction requirements), it is requested that there be a meeting between the representatives of the Department and Hatco in order to ensure that each of same is applicable to the items which are to be required of Hatco.

(17) In Section II, paragraph A(2), the Department has assumed the use of the infiltration-percolation lagoons. That is a matter warranting discussion in that Hatco would appreciate the opportunity to discuss the closure of same with the Department. Additionally it would not be possible to provide a list of all materials discharged to the infiltration-percolation lagoons because same occurs on a non-regular basis and the waste stream is an admixture of various items. Yet failure to comply with this condition which is impossible to comply with -- would subject Hatco to substantial civil and criminal liability; thus this section should be deleted. At Section II Part A(4), the requirement is improper and should be deleted. The same applies to Part II at Section 8(1).

(18) With regard to Part III of the draft permit, Hatco submits respectfully that it is improper for the Department to require additional wells when there is an outstanding administrative consent order which deals with the same issue. That is a matter which formally resolved an adversary proceeding between the DEP and Hatco. The division cannot now in a unilateral way simply mandate that some other actions on these same subjects be taken. Both parties are bound by the Administrative Consent Order and if changes are to be made to it, it should be done through a re-opening of that administrative proceeding.

(19) As to the various parameters identified in Part III, Hatco would greatly appreciate the opportunity to meet with representatives of the DEP and to confer regarding the applicability of the items set forth, and the limitations applied.

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(20) To the extent that Part III of the draft permit purports to require that existing wells be replaced, etc., that would be in violation of the existing Administrative Consent Order and, as noted above, should be deleted. Additionally, the application of the "monitoring report-transmittal sheet" goes beyond that Administrative Consent Order and Hatco would appreciate the opportunity to confer before same becomes final.

(21) With regard to Part III of the draft permit, under Table 1, ("discharged limitations and monitoring requirements"), Hatco requests the opportunity to confer with representatives of the Department as to the parameters, the sampling methodology, the reporting requirements, etc., before same becomes final.

(22) The requirement in paragraph #4 of Part IV of the draft permit is substantially burdensome and should be revised so that a more obtainable inspection schedule is set forth.

(23) Paragraph #8 in Part IV sets forth a time period about which Hatco requests a conference.

(24) Items #11 and 12 in Part IV of the permit require a meeting between technical representatives of Hatco and of the Department. The well sampling protocol may very well depend on which wells are placed and when. For example, you may recall our discussions during which it was noted that placement of certain wells might be impossible. Also to the extent that these requirements imply the installation of additional wells -- beyond what is being required under the Administration Consent Order -- a conference would be appreciated.

(25) The timing requirements and the remedial action mandated in paragraph #13 of Part IV require adjustment. The timing is not realistic and a different compliance schedule should be discussed. Additionally the blanket requirement to "remove all contaminated soil from the site" is so broad as to be effectively unworkable and yet Hatco would be subject to substantial civil and criminal liability should a controversy over same arise. The requirement warrants a conference to ensure that the steps which are required are indeed reasonably obtainable.

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(26) Item 13(a) in Part IV is overbroad to the extent that it requires, for example, removal of the liner. That is an environmental protection device and its removal is both unnecessary and not warranted.

(27) Items 13(d) and 13(e) in Part IV of the draft permit are far too overbroad and not reasonably obtainable as stated. Hatco requests a conference to confer regarding a remediation plan which is workable and serves to allay the Department's concerns.

(28) The boring protocol set forth in paragraph 14 of Part IV of the draft permit may destroy the integrity of the clay liners in the lagoons and therefore Hatco respectfully excepts same.

(29) Hatco submits respectfully that the ponds on the premises were previously closed under the auspices of, and with the approval of the Department. Thus it is improper for the Department to require Hatco to re-invent the wheel concerning same and elements in the draft permit relating to those items should be deleted or alternatively a conference should be scheduled among the technical representatives of Hatco and the Department so as to determine reasonable protocol for moving forward in those areas.

(30) Hatco respectfully takes exception to Item #19. The object of that paragraph is the natural water course and it is not appropriate to require Hatco to engage, under a NJPDES, in a broad-scale testing program regarding same. It certainly is improper to require an "impermeable liner" throughout this entire naturally occurring depression, as set forth in Item #20 in Part IV of the permit.

(31) Hatco respectfully takes exception to Item #21, Part IV of the permit in its entirety. This simply is not an obligation which can be mandated upon the company.

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(32) Item #22 is substantially overbroad and vague. It should be deleted or restated so that it is obtainable and not phrased in such a way to put Matco in jeopardy of substantial civil and/or criminal liability if some flow, somewhere, is missed. Additionally the parameters which are required may be inapposite and there is no established link between what is being required and any factual findings by the Department which would justify such broad base requirements.

(33) With regard to Item #23 and Part IV, Matco would appreciate the opportunity to meet with the Department to develop a response relating to the emergency lagoons so as to allay your concerns.

(34) In Item #25 the division seeks by fiat to amend the Administrative Consent Order dated September 30, 1982. That is not something which the division properly may do. The matter must be re-opened on hearing so as to amend or modify the terms of that order. In fact this underscores a number of the prior comments. Essentially this draft NJPDES permit seeks to change the terms of that order in a unilateral way. That cannot be done through a self-generated permit by the division.

(35) Limits on construction deadlines are subject to the availability of the contractors and, therefore, required time schedules may not be met. There should be flexibility in the draft permit relating to same.

(36) In general, with regard to Part III the ground water sampling parameters should be analyzed during the first year only. At that point there should be a re-evaluation and re-assessment of any further requirements.

(37) With regard to Part III, exact placement of wells such as MW6S, MW8S and MW9S should be determined in the field.

(38) Review of the Nuodex ground water files are essential in order to compile a complete site evaluation and to respond to the NJPDES permit requirements. Accordingly, no final action should be taken on this permit until that data is presented by the Department to Matco for review and additional comments, as warranted, are provided.

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(39) Hatco previously has been represented by the firm of Wilentz, Goldman & Spitzer and there has been substantial correspondence to the DEP from Francis X. Jornick, Esquire. In much of that correspondence, which is a matter of departmental record, exception was taken to the imposition of requirement, by the Department on Hatco for remedial action and/or monitoring without an underlying and supportive factual basis (with reasonable findings of fact) by the Department that there were discharges occurring. The entirety of that record is respectfully incorporated by reference into these initial comments to the draft NJPDES permit.

(40) Rather than mandate in the permit -- and absent prior consultation with representatives of Hatco -- a methodology for closure of the lagoons, a conference regarding same should be held such that a mutually agreeable closure plan may be reached.

(41) Accordingly there should not be a final permit setting forth mandated closure requirements, with the accompanying threat of civil and criminal liability, pending such sessions.

We trust that this initial letter satisfies the Department's demand that a response be provided to the draft permit no later than March 24, 1986.

I look forward to hearing from you at your convenience as to next steps and respectfully request that you provide us all with an opportunity to meet both with regard to an implementation schedule and to allow for a mutual assessment and resolution of these engineering and technical issues.

Hatco is anxious work with the Department in these regards. We sincerely hope that the Department will take us up on this offer so as to develop a solution to your concerns which satisfies your administrative requirements and at the same time fairly serves all parties.

Please call at your convenience if you have any questions.

Very truly yours,

EDELSTEIN & BERNSTEIN

BY:

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